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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,887	12/11/2001	Geoffrey W. Krissansen	87792.353006	2382
23469 7590 07/25/2008 JAECKLE FLEISCHMANN & MUGEL, LLP 190 Linden Oaks ROCHESTER, NY 14625-2812				
EXAMINER YAO, LEI				
ART UNIT		PAPER NUMBER		
1642				
NOTIFICATION DATE		DELIVERY MODE		
07/25/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/014,887

Applicant(s)

KRISSANSEN ET AL.

Examiner

LEI YAO

Art Unit

1642

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-4, 12-14, 20-22, 28-30, 36-38.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Larry R. Helms/
Supervisory Patent Examiner, Art Unit 1643

/Lei Yao, Ph.D./
Examiner, Art Unit 1642

Continuation of 11 because: Applicants amended to claims, however, the amendment does not overcome the latest rejections. For example, the claims are amended from "eradicating advanced tumor" to "treating advanced tumor" with the same material with the same method steps, which would be unpatentable over Futami et al in view of Wilson et al and Olsson et al in combination as stated in the final rejection dated 4/28/2008 briefly as the following:

Futami et al., teach a method of treating a tumor with 5-methyl XAA in conjunction with a T-cell stimulating molecule, IL-2.

Wilson et al., teach 5, 6-dimethyl antherone-4-acetic acid (DMXAA), which potentiates tumor radiation response compared to each treatment alone

Olsson et al., teach that Human IL-2 is induced by CD80 (B7.1, a CAM molecule) in cancer cells and T cells.

It would have been prima facie obvious to one of ordinary skill in the art at the time the claimed invention was made to replace the IL-2 with its stimulator (CAM) and a specific analog of XAA, DMXAA with a expected result. One of ordinary skill in the art at the time the invention was made would have been motivated to apply the teachings of Wilson et al., and Olsson et al., to the method of Futami et al., in order to benefit for the treatment of advanced or large tumor because both Wilson et al., and Futami have already shown the advantage of the tumor therapy by potentiating or synergistic response for the large tumor in combination of anti-tumor treatment with DMXAA and because Olsson et al., show the association between T cell growth factor IL-2 and B7.1 stimulation. One of ordinary skill in the art at the time the invention was made would have been motivated with reasonable expectation of success to modify the treatment schedule or method steps in order to optimize and increase the efficacy of the treatment by administering B7.1 prior to the DMXAA because Futami et al., have already shown administering a subject two or more reagents at different times and Olsson et al., teach that T-cell proliferation stimulated by IL-2 is induced by B7.1 and Wilson et al., also show that DMXAA induces other antitumor cytokine productions during the treatment, which would suggest the combination treatment results from more than two anti-tumor agents presented in the subject.

Applicant's argument is also considered, but not found persuasive to overcome the rejection for the reason as set forth in the final Office action dated 4/28/2008.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lei Yao, Ph.D. whose telephone number is 571-272-3112. The examiner can normally be reached on 8am-6.00pm Monday-Thursday.

Any inquiry of a general nature, matching or file papers or relating to the status of this application or proceeding should be directed to Kim Downing for Art Unit 1642 whose telephone number is 571-272-0521

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms can be reached on 571-272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).